

REMARKS/ARGUMENTS

Claims 1-19 remain in the application and independent Claims 1, 14, and 18 have been amended. Reconsideration of this application is respectfully requested.

Claim Rejections - 35 U.S.C. § 102(b)

Claims 1-3 are rejected under 35 U.S.C. § 102(b) as being anticipated by USPN 5,263,177 (Schieve). Applicants, however, strongly disagree and respectfully traverse the rejection.

Applicants have amended the independent claims, namely Claims 1, 14, and 18, to add a limitation to clarify that unavailability of the simulcast station means that the simulcast station "can not at least one of transmit and receive." The Examiner seems to have confused the concept of base site selection in Schieve with the concept of "unavailability" of Applicants' claimed invention. In the passage cited by the Examiner (namely col. 3, lines 42-69; figures 3 and 4), what is taught is base site selection based upon receiving a message from the communication unit where the message contains the RSSI. To receive the message, the base site must be functioning. In contrast, Applicants' claimed invention requires that the base site not be able to "at least one of transmit and receive." Since such a limitation is not taught by the prior art, the rejection of Applicants' claimed invention is improper.

Regarding Claim 4, in addition to the above, Applicants fail to find a teaching to "failing to receive a response to a message" in the cited passage (namely col. 3, lines 14-41 and figure 2). There is no mention of a failed message there or any where in Schieve.

Regarding Claim 5, in addition to the above, Applicants fail to find a teaching to using "timestamp(s) specifying when the data will be transmitted" in the cited passage (namely col. 3, lines 23-41). There is no mention of the usage of "timestamps" there or any where in Schieve.

Regarding Claim 13, in addition to the above, Applicants fail to find a teaching to "malfunction" in the cited passage (namely col. 4, lines 46-51). In Schieve, the base site has full transmit and receive capability and can communicate. The Examiner seems to equate a discussion of "interference" with a malfunction, but in Schieve, the controller chooses not to use a site to minimize "interference" of the system not because the site has a "malfunction."

Based upon this lack of teachings, the Applicants insist that Schieve fails to describe the invention of the present application as amended. Since Schieve fails to disclose essential limitations of the claimed invention, namely "can not at least one of transmit and receive," there is no anticipation under 35 U.S.C. § 102, because the exclusion of a claimed element from the prior art reference is enough to negate anticipation by that reference. For these reasons, the Applicants assert that the claims in the present application are not anticipated by Schieve and may therefore be passed to allowance.

Allowable Subject Matter

Claims 6-12 are objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form, including all other limitations of the base claim and any intervening claims. Since Claims 1-5 and 13-19 should also be allowable, the Applicants believe that that the subject application, as amended, is in condition for allowance. Such action is earnestly solicited by the Applicants. In the event that the Examiner deems the present application non-allowable, it is requested that the Examiner telephone the Applicant's attorney or agent at the number indicated below so that the prosecution of the present case may be advanced by the clarification of any continuing rejection.

Please charge any fees associated herewith, including extension of time fees, to Deposit Account 502117.

Respectfully submitted,

SEND CORRESPONDENCE TO:

Motorola, Inc.
Law Department

Customer Number: 22917

By: _____

Indira Saladi

Attorney of Record

Reg. No.: 45,759

Telephone: 847.576.6735

Fax No.: 847.576.0721